STATE OF MICHIGAN

COURT OF APPEALS

STEVEN M. RADDEN, STEVE'S DELICATESSEN AND RESTAURANT, INC., d/b/a STEVE'S SOUL FOOD, and THE KEY CLUB, INC., d/b/a FRANKLIN STREET RESTAURANT,

Plaintiffs-Appellants,

v

CITY OF DETROIT, VALITA WATLEY, Individually and in her official capacity as Detroit Public Health Sanitarian, DENNIS VEAL, Individually and in his official capacity as Supervising Detroit Public Health Sanitarian, DETROIT FOOD SANITATION DIVISION ADMINISTRATOR, and DETROIT PRINCIPAL PUBLIC HEALTH SANITARIAN,

Defendants-Appellees.

UNPUBLISHED
February 21, 2006

No. 263648
Wayne Circuit Court
LC No. 03-336382-NZ

Before: Donofrio, P.J., and Murphy and Kelly, JJ.

PER CURIAM.

Plaintiffs appeal an order granting summary disposition in favor of defendants in this action arising out of multiple health inspections of plaintiff Steven Radden's restaurant, Steve's Soul Food. We affirm.

Plaintiffs claim that defendant Watley, a sanitarian for the city of Detroit, is liable for malicious prosecution, intentional interference with a business relationship or economic expectancy ("tortious interference"), and gross negligence as a result of actions she took while serving as a public health sanitarian for the food sanitation division ("the division") of the Detroit Health Department.[1] After conducting several inspections of Steve's Soul Food

[1] Plaintiffs appear to claim that the other individual defendants may also be liable for these torts. However, plaintiffs' argument on appeal refers almost exclusively to Watley's acts. Because (continued…)

restaurant in Detroit, which is owned and operated by Radden, Watley requested and served an order requiring Radden to cease and desist operating the restaurant until he had corrected numerous violations of the Public Health Code (the "food code"), MCL 333.1101, *et seq.* The cited violations encompassed 18 violation categories, including three "critical violation" categories. Plaintiffs claim that the violations were exaggerated and did not justify closure of the restaurant. They further claim that Watley caused public ridicule of Steve's Soul Food because Watley allegedly alerted the news media, which arrived on the day the cease and desist order was served and reported the closure of the restaurant. As a result, plaintiffs claim that Steve's Soul Food in Detroit lost business and could not reopen; they also claim that the Steve's Soul Food restaurant in Southfield was driven out of business because of negative publicity associated with the Detroit location.

We review the trial court's order granting summary disposition de novo. *Bergen v Baker*, 264 Mich App 376, 381; 691 NW2d 770 (2004). The applicability of governmental immunity is also a question of law that this Court reviews de novo. *Herman v Detroit*, 261 Mich App 141, 143; 680 NW2d 71 (2004). Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10). Because the trial court granted summary disposition based on governmental immunity pursuant to MCL 691.1407, the ruling was rendered under MCR 2.116(C)(7), which allows for summary disposition when immunity is granted by law. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). Parties advocating or opposing a motion under MCR 2.116(C)(7) may submit documentary evidence in support of their positions. MCR 2.116(G)(2). The court must consider these materials and must accept as true any well-pleaded allegations of the nonmoving party unless contradicted by the documentary evidence. MCR 2.116(G)(5); *McKiney v Clayman*, 237 Mich App 198, 201; 602 NW2d 612 (1999). If the plaintiff challenges governmental immunity based on a government employee's alleged gross negligence, summary disposition is proper under subrule (C)(7) if – when the proffered evidence is viewed in a light most favorable to the plaintiff – reasonable minds could not find that the employee's conduct constituted gross negligence. *Jackson v Saginaw Co*, 458 Mich 141, 146-147; 580 NW2d 870 (1998).

MCL 691.1407 provides, in pertinent part:

> (2) Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency . . . is immune from tort liability for an injury

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(…continued)

plaintiffs do not elaborate their legal arguments concerning the remaining defendants' alleged liability, plaintiffs have not properly presented these arguments for review. *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984); *Badiee v Brighton Area Schools*, 265 Mich App 343, 357; 695 NW2d 521 (2005). Moreover, we agree with defendants that plaintiffs' complaint does not specifically allege tortious acts by the remaining defendants and, therefore, the claims against these defendants may be properly dismissed pursuant to MCR 2.116(C)(8) for failure to state a claim on which relief may be granted. *Henry v The Dow Chemical Co*, 473 Mich 63, 71; 701 NW2d 684 (2005). Finally, we note that, regardless, the record does not appear to reflect gross negligence on the part of the remaining defendants for reasons similar to those addressed, *infra*, in our discussion of Watley's alleged gross negligence.

> to a person or damage to property caused by the officer, employee, or member while in the course of employment or service . . . if all of the following are met:
>
> (a) The officer [or] employee . . . is acting or reasonably believes he or she is acting within the scope of his or her authority.
>
> (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
>
> (c) The officer's [or] employee's . . . conduct does not amount to gross negligence that is the proximate cause of the injury or damage.
>
> (3) Subsection (2) does not alter the law of intentional torts as it existed before July 7, 1986.

Plaintiffs claim that Watley is not immune based on subsection (2)(c) because she acted with gross negligence.[2] For the purposes of the governmental immunity act, gross negligence "means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a); *Tarlea v Crabtree*, 263 Mich App 80, 90; 687 NW2d 333 (2004). The standard suggests "almost a willful disregard of precautions or measures to attend to safety and a singular disregard for substantial risks." *Id.* Furthermore, for liability to result, the government employee's gross negligence must be the "one most immediate, efficient, and direct cause of the injury or damage, i.e., the proximate cause." *Robinson v Detroit*, 462 Mich 439, 462; 613 NW2d 307 (2000).

We hold that a reasonable trier of fact could not conclude that Watley acted with gross negligence; rather, she appears to have been properly carrying out the duties of her job. First, plaintiffs appear to argue that Radden did not receive sufficient notice before the cease and desist order was served. Plaintiffs refer to the lack of specificity of Watley's initial inspection report as well as Radden's claim that he "could sometimes tell what needed to be fixed" but some cited

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[2] The bulk of plaintiffs' brief discusses the issue of gross negligence. However, plaintiffs also make reference to MCL 691.1407(3), which may directly preclude immunity for intentional torts. *Lavey v Mills*, 248 Mich App 244, 257; 639 NW2d 261 (2001). Plaintiffs do not expand on the issue in any meaningful manner, and they do not discuss the elements and principles related to the alleged causes of action that constitute intentional torts, nor do they explain their cursory citations to case law. Moreover, they did not include this issue in their statement of questions presented. Accordingly, they have waived this argument. MCR 7.212(C)(5); *English v Blue Cross Blue Shield of Michigan*, 263 Mich App 449, 459; 688 NW2d 523 (2004); see also *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984); *Badiee*, *supra* at 357 (a party may not merely give cursory treatment of an issue and leave it to this Court to elaborate his arguments). Regardless, plaintiffs failed to establish, as a matter of law, claims of malicious prosecution and tortious interference on the facts of this case. See *Friedman v Dozorc*, 412 Mich 1, 48; 312 NW2d 585 (1981); *Mino v Clio School Dist*, 255 Mich App 60, 78; 661 NW2d 586 (2003).

violations "just were not true." They note that Watley gave her initial March 13, 2000, inspection report to a relief cashier rather than explaining the cited violations to Radden. They also note that Radden did not timely receive the division's notices that hearings were to be held regarding his failure to comply with the required corrections.

However, Watley performed multiple follow-up inspections and there is no evidence that Radden was not aware of the results of these inspections or that Radden failed to receive the October 19, 2000, inspection report. Both the March 13, 2000, report and the October 19, 2000, report warned, "Failure to comply with this notice may result in license suspension and/or other legal action. You have the right to appeal any violations listed." Moreover, Watley conducted another inspection on November 2, 2000, in the presence of Radden and her supervisor, Dennis Veal, immediately before she served the cease and desist order; she again found multiple uncorrected violations.

Plaintiffs also do not provide evidence to support their argument that Watley's training or supervision was deficient or caused her to arbitrarily administer her duties. Although plaintiffs take issue with her training, which consisted of site visits, the review of a manual, and the drafting of inspection reports that were reviewed by a supervisor, plaintiffs provided no evidence that further training was necessary or required by law. Similarly, the record does not support plaintiffs' contention that Watley's training was insufficient merely because the division initiated more extensive training in 1999 or 2000.

More significantly, there is no evidence that the critical violations observed by Watley did not exist. Plaintiffs merely cite Radden's opinion that, on the day the cease and desist order was served, there were no eminent or substantial health hazards which justified closing the restaurant. Just as significantly, plaintiffs provided no evidence to contradict that the violations cited by Watley existed and formed a proper basis for the issuance of a cease and desist order, despite their unsupported claims that Watley was biased against them. We note, further, that the order was issued by the division, not by Watley herself. We also again note that Watley's supervisor was present when the final inspection was conducted immediately before Watley served the order.

For the above reasons, we conclude that a reasonable fact-finder could not find that Watley's conduct reflected "almost a willful disregard of precautions or measures to attend to safety and a singular disregard for substantial risks." *Tarlea, supra* at 90. Furthermore, the affidavit of plaintiffs' expert, Robert Powitz, does not affect our analysis. Powitz attested that Watley did not have "any competency-based credentials as either a sanitarian or food safety expert" and opined that her lack of knowledge was "disturbing." He also concluded that there were inspection issues "in question" that precluded the issuance of a cease and desist order. However, Powitz does not state the facts on which he based these conclusions, nor does he explain what standards he used to determine either what credentials are sufficient or under what circumstances a cease and desist order may be issued. Notably, with regard to the factual bases of his opinion that the order was not justified, the document to which he refers is described as the inspection report "upon which closure was justified" and which was "signed by the cashier;" thus, there is no evidence that he had even reviewed the later inspection reports which, for instance, indicated continuing noncompliance and which immediately preceded the issuance of the order.

Thus, as is argued by defendants, Powitz's affidavit is not sufficient to create a genuine issue of fact regarding Watley's alleged gross negligence. Summary disposition is not precluded merely because a party has produced a supporting expert. *Amorello v Monsanto Corp*, 186 Mich App 324, 331; 463 NW2d 487 (1990). The expert's opinion must also be admissible. MCR 2.116(G)(6); *Amorello, supra* at 331. To be admissible, the court must determine that the expert's opinion will assist the trier of fact to understand the evidence or to determine a fact in issue. MRE 702; *In re Noecker*, 472 Mich 1, 11; 691 NW2d 440 (2005). The opinion must also be (1) "based on sufficient facts or data" and be (2) "the product of reliable principles and methods" which have been (3) reliably applied to the facts of the case. MRE 702; *Noecker, supra* at 11. Here, there is no evidence that any of these necessary elements were satisfied.

Finally, we note that the record also does not suggest that Watley's alleged gross negligence was the "one most immediate, efficient, and direct cause of the injury or damage[.]" *Robinson, supra* at 462-463. In *Robinson*, for instance, police officers were found to be immune from liability for their acts in pursuing fleeing vehicles during a high speed car chase. *Id.* at 462. There, the most immediate, direct cause of injuries to passengers in the fleeing vehicles was the reckless conduct of the drivers of those vehicles. *Id.* Here, Radden elected not to correct or appeal the cited violations. Moreover, plaintiffs appear to agree that Steve's Soul Food could have reopened for business after the order was issued. Radden claims, however, that "[t]he damage had already been done," because the media had arrived, causing Steve's Soul Food to be "publicly ridiculed." However, there is no evidence that Watley or the division contacted the media and, more significantly, there is no evidence that Radden attempted to reopen his business but failed to attract customers. Rather, it appears that Radden never attempted to reopen Steve's Soul Food in Detroit. Accordingly, even if one accepts as true Radden's claim that his Southfield location lost business as a result of the events in Detroit, plaintiffs have not created a genuine issue of fact regarding whether the closure was caused by the initial "negative publicity" or, instead, because Radden chose not to correct the violations or to reopen his Detroit location.

Affirmed.

/s/ Pat M. Donofrio
/s/ William B. Murphy
/s/ Kirsten Frank Kelly